

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

FREDERICK HERMAN FISHER,

Plaintiff,

v.

Case No. 03-CV-71804-DT

PATRICIA CARUSO,

Defendant.

**OPINION AND ORDER DENYING PLAINTIFF'S "MOTION FOR
APPOINTMENT OF COUNSEL" FOR UNCONSOLIDATED CASE**

Pending before the court is Plaintiff's "Motion for Appointment of Counsel," which was filed on November 9, 2006. In his motion, Plaintiff requests appointment of counsel to bring forth claims of alleged retaliatory transfers of Plaintiff by Defendant to prison housing containing purportedly higher levels of second-hand smoke. In civil cases, the court may request, but may not require, appointment of counsel for an indigent plaintiff. 28 U.S.C. § 1915(e)(1); *Mallard v. U.S. Dist. Ct. for Southern Dist. of Iowa*, 490 U.S. 296, 301-08. The above-captioned case does not include Plaintiff's claims of retaliatory transfer. Those allegations appear, however, in Plaintiff's later-filed complaint (Case No. 06-11110). Because these are separate cases that have not been consolidated, the court will deny Plaintiff's instant motion.¹ Accordingly,

¹The court has, however, taken steps to request and locate voluntary counsel for Plaintiff's original action of alleged medical indifference to his respiratory condition and his exposure to secondhand smoke. This order is not in opposition to those steps. Rather, the effect of this order is limited to denying Plaintiff's request for counsel to litigate claims of retaliation, which belong to a separate case that is later-filed and less developed.

IT IS ORDERED that Defendant's "Motion for Appointment of Counsel" [Dkt #117] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 29, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 29, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522